

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JERRY EUGENE SHRUBB,)	
)	
Petitioner,)	
)	Civil Action No. 17-62 Erie
v.)	
)	
MICHAEL R. CLARK, et al.,)	
)	
Respondents.)	

MEMORANDUM OPINION

This federal habeas corpus proceeding was commenced by petitioner Jerry Eugene Shrubb (“petitioner”) on March 3, 2017, and was referred to a United States Magistrate Judge for a report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges. The magistrate judge's report and recommendation (ECF No. 15), filed on December 7, 2017, recommended that the motion to dismiss (ECF No. 6) filed on behalf of respondent, the District Attorney of Elk County, Pennsylvania, be granted and the instant petition for habeas corpus relief be dismissed as untimely filed. In addition, the magistrate judge recommended that a certificate of appealability be denied.

On December 28, 2017, petitioner filed his objections to the report and recommendation (ECF No. 16). Where, as here, objections have been filed, the court is required to make a *de novo* determination as to those portions of the report and recommendation to which objections were made. *See* 28 U.S.C. §636(b)(1). Petitioner repeats arguments raised before the magistrate judge and is seeking equitable tolling for the period May 12, 2014 to February 28, 2017 in order to overcome the bar of the one-year statute of limitations. In this court’s view, petitioner’s

objections lack merit and raise arguments that were already properly addressed in the magistrate judge's report and recommendation. Specifically, petitioner argues that his lack of legal knowledge about the second PCRA petition being untimely should permit equitable tolling. The magistrate judge noted that for the court to use equitable tolling petitioner must show, among other things, that "some extraordinary circumstance stood in his way and prevented timely filing." R&R at 8(citing Ross v. Varano, 712 F. 3d 784, 798-804 (3d Cir. 2013)). Petitioner's lack of legal knowledge, however, is not alone sufficient to justify equitable tolling. Ross, 712 F.3d at 799-800. Accordingly, after *de novo* review of the petition and documents in the case, together with the report and recommendation and objections thereto, the motion to dismiss will be granted and an appropriate order will be entered.

Dated: January 19, 2018

/s/ Joy Flowers Conti
Joy Flowers Conti
Chief United States District Judge

cc: Jerry Eugene Shrubbs
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